IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 786 of 2007()

C.C. 2204/04, J.F.C.M., I, KOLLAM

PETITIONER/ACCUSED:

IBRAHIMKUTTY, THONDALIL VEEDU,
AYIKKUNNATHU MURI, SOORANADU SOUTH VILLAGE,
KUNNATHUR TALUK, KOLLAM.

BY ADV. SRI.K.SUBASH CHANDRA BOSE
SRI.V.RAJASEKHARAN PILLAI

RESPONDENTS/STATE/COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. B.VIJAYAKUMAR,
THOTTUMKARA VEEDU, AYATHIL P.O.,
PUTHALATHAZHAM, KOLLAM.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 786 of 2007

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Dated this the 20th day of March, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. The cheque is for an amount of Rs. 7 lakhs. Cognizance has been taken on the basis of a private complaint filed by the second respondent/complainant.

2. The petitioner has come to this Court to complain that the alleged loan transaction of Rs.7 lakhs offends the provisions of Section 269(ss) of the Income Tax Act and such infraction is punishable. Therefore he contends that the liability, to discharge which the cheque has allegedly been issued, is not a legally enforcible debt/liability. I do not want to make any final pronouncement on the question now. I am satisfied that it is for the petitioner to raise this contention before the learned Magistrate in the course of trial and seek appropriate orders.

3. In my anxiety to ensure that the petitioner does not lose his right to raise all his appropriate contentions before the trial court, I do not want to express any final opinion on this question. Whether the

transaction is valid and whether because of the infraction of proceedings evidence about such transaction can be adduced or accepted are all questions that the petitioner must raise before the learned Magistrate at appropriate stage.

3. This Crl.M.C. is dismissed with the above observations.

(R. BASANT)
Judge

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